

1 **CLARK HILL LLP**
2 Dean A. Olson (SBN 126155)
3 DOlson@ClarkHill.com
4 Wendi J. Frisch (SBN 211555)
5 WFrish@ClarkHill.com
555 South Flower Street, 24th Floor
6 Los Angeles, CA 90071
7 Telephone: (213) 891-9100
8 Facsimile: (213) 488-1178

9 Attorneys for Defendant,
10 UMB BANK, N.A.

11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 JAMES REED AND CAROLYNN
15 REED, on behalf of themselves and all
16 others similarly situated, *Plaintiffs*,

17 GWENDALYN DOUGLASS as trustee
18 of RAYMOND E. DOUGLASS
19 REVOCABLE TRUST, executor of The
Raymond E. Douglass estate, and as
successor in interest,

20 *Plaintiffs*

21 v.
22 RELIANT LIFE SHARES, LLC. a
California limited liability company; ~~RLS~~
23 ~~FINANCIAL SERVICES, INC.~~, a
California corporation; RELIANT LIFE
24 SHARES SERIES TRUST, aka RLS
TRUST, a trust; RMS TRUST, a trust;
SEAN MICHAELS, an individual;
SCOTT GRADY, an individual;
WILMINGTON SAVINGS FUND
SOCIETY, a federal savings bank doing
business as CHRISTIANA TRUST,
individually and as trustee; UMB BANK,
N.A., a federally chartered bank,
individually and as trustee; ~~BOU~~
~~BANCORP, INC.~~ doing business as
~~BANK OF UTAH~~; BANK OF UTAH,
individually and as trustee; FIRST
25 WESTERN TRUST BANK, a Colorado
Corporation, individually and as trustee;
RLS, Grantor, LLC, A California limited
liability company, ANDREW MURPHY,
an individual, and DOES 1-20,

26
27 *Defendants*
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Case No. 2:23-CV-08577-SB-AGR
(Lead Case)

Consolidated with Case No. 2:23-CV-
00460 SB (AGRx)

**DEFENDANT UMB BANK, N.A.'S
NOTICE OF MOTION AND
MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED
COMPLAINT PURSUANT TO
FRCP RULES 12(B)(6), 9(B), AND
8(A)**

Date: February 2, 2024
Time: 8:30 a.m.
Courtroom: 6C
Judicial Officer: Hon. Stanley
Blumenfeld, Jr.

[Filed concurrently with Memorandum
of Points and Authorities and [Proposed]
Order]

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on February 2, 2024, at 8:30 a.m., or as soon
3 thereafter as the matter may be heard in Courtroom 6C of the United States District Court
4 for the Central District of California, located at 350 W. 1st Street, Los Angeles,
5 California, 90012, defendant UMB BANK, N.A. (“UMB”) will and hereby does move
6 this Court pursuant to Rules 12(b)(6), 9(b), and 8(a) of the Federal Rules of Civil
7 Procedure for an Order dismissing the First Amended Complaint (“FAC”) as to UMB.

8 **PLEASE TAKE FURTHER NOTICE** that UMB brings this Motion on the
9 following grounds:

10 1. All of the claims in the FAC brought by plaintiffs James Reed and Carolyn
11 Reed (collectively, the “Reed Plaintiffs”) should be dismissed as to UMB for failure to
12 state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal
13 Rules of Civil Procedure because the Reed Plaintiffs’ damages predated UMB’s alleged
14 involvement as a trustee, so no alleged harm could have flowed from any alleged action
15 or inaction on the part of UMB to the Reed Plaintiffs.¹

16 2. All of the claims brought by the Reed Plaintiffs also should be dismissed as
17 to UMB for failure to state a claim upon which relief can be granted pursuant to Rule
18 12(b)(6) of the Federal Rules of Civil Procedure because all of the Reed Plaintiffs’
19 claims are time-barred by the applicable statutes of limitations.

20 3. The FAC’s First Cause of Action, for Negligence, also should be dismissed
21 as to UMB for failure to state a claim upon which relief can be granted pursuant to Rule
22 12(b)(6) of the Federal Rules of Civil Procedure because the FAC fails to plead essential
23 elements of this claim as to UMB, including duty. Additionally, the alleged negligence

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25 ¹ The Reed Plaintiffs only assert the following causes of action against UMB in the FAC,
26 all of which should be dismissed as to UMB: (1) First Cause of Action, for Negligence,
27 (2) Second Cause of Action, for Gross Negligence, (3) Fourth Cause of Action, for
Violation of California Corporations Code § 25504.1, (4) Fifth Cause of Action, for
Breach of Fiduciary Duty, (5) Fifth [sic] Cause of Action, for Financial Elder Abuse
(Welfare & Institutions Code § 15600 et seq.). (6) Sixth Cause of Action, for Unfair
Business Practices (Bus. & Prof. Code §§ 17203 et seq.). The remaining causes of action
in the FAC are *not* asserted against UMB.

1 and/or alleged criminal conduct of the other defendants that Plaintiffs have lumped into
2 this cause of action were unforeseeable and are thus superseding causes to any alleged
3 negligence on the part of UMB.

4. The FAC's Second Cause of Action, for Gross Negligence, also should be
5 dismissed as to UMB for failure to state a claim upon which relief can be granted
6 pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure because the FAC fails
7 to plead essential elements of this claim as to UMB, including duty and "lack of any care
8 or an extreme departure from what a reasonably careful person would do in the same
9 situation to prevent harm to oneself or to others" on the part of UMB. (*Rosencrans v.*
10 *Dover Images, Ltd.*, 192 Cal. App. 4th 1072, 1082 (2011), citation omitted.)

5. The FAC's Fourth Cause of Action, for Violation of Corporations Code
§ 25504.1, also should be dismissed as to UMB because this cause of action sounds in
fraud but fails to state with particularity the circumstances constituting UMB's alleged
fraud pursuant to Rule 9(b) of the Federal Rules of Civil Procedure.

6. The FAC's Fifth Cause of Action, for Breach of Fiduciary Duty, also should
be dismissed as to UMB for failure to state a claim upon which relief can be granted
pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure because the FAC fails
to plead essential elements of this claim as to UMB, including a fiduciary relationship
between the Reed Plaintiffs and UMB.

7. The FAC's Fifth [sic] Cause of Action, for Financial Elder Abuse (Welfare &
Institutions Code § 15600 et seq.) also should be dismissed as to UMB for failure to state
a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules
of Civil Procedure and because this cause of action sounds in fraud but the FAC fails to
state with particularity the circumstances constituting UMB's alleged fraud pursuant to
Rule 9(b) of the Federal Rules of Civil Procedure.

8. The FAC's Sixth Cause of Action for Unfair Business Practices (Bus. & Prof.
Code §§ 17203 et seq.) also should be dismissed as to UMB because this cause of action
sounds in fraud but fails to state with particularity the circumstances constituting UMB's

1 alleged fraud pursuant to Rule 9(b) of the Federal Rules of Civil Procedure.

2 9. The FAC's claims for disgorgement and an equitable accounting under the
3 FAC's Sixth Cause of Action for Unfair Business Practices (Bus. & Prof. Code §§ 17203
4 et seq.) also should be dismissed as to UMB for failure to state a claim upon which relief
5 can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure because
6 Plaintiffs' recovery for this cause of action is generally limited to injunctive relief and
7 restitution, and damages are not available. (*Pfizer Inc. v. Superior Court (Galfano*)
8 (2010) 182 Cal. App. 4th 622, 631, review denied. See also, *Cel-Tech Commc'ns, Inc.*
9 *v. L.A. Cellular Tel. Co.*, 20 Cal. 4th 163, 179 (1999), and *Inline, Inc. v. A.V.L. Holding*
10 *Co.* (2005) 125 Cal. App. 4th 895, 903.) Nor is non-restitutionary disgorgement an
11 available remedy. (*Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1145,
12 1148 (2003).).

13 10. The FAC's claims for punitive and exemplary damages and any supporting
14 allegations related thereto also should be dismissed as to UMB for failure to state a claim
15 upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil
16 Procedure because the FAC fails to satisfy federal pleading and substantive state law
17 requirements for recovery of punitive and exemplary damages. (*Kelley v. Corrections*
18 *Corp. of America*, 750 F. Supp. 2d 1132, 1147-1148, Cal. Civ. Code § 3294, Cal. Welf.
19 & Inst. Code § 15657.5(c).)

20 **PLEASE TAKE FURTHER NOTICE** that UMB's Motion is based on this Notice
21 of Motion, the accompanying Memorandum of Points and Authorities, the
22 accompanying [Proposed] Order, the pleadings and papers on file in this action, and such
23 other oral and documentary evidence as may properly come before this Court at the
24 hearing on this Motion.

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1 This Motion is made following the conference of counsel pursuant to L.R. 7-3 which
2 commenced on December 22, 2023, and was completed on January 2, 2024.

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4 Dated: January 5, 2024

Respectfully submitted,

5 **CLARK HILL LLP**

6
7 By: /s/ Dean A. Olson

8 Dean A. Olson

9 Wendi J. Frisch

10 Attorneys for Defendant UMB BANK, N.A.

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